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## MEMO ENDORSED

May 23, 2008

**VIA FACSIMILE (212) 805-6712**

Honorable Kevin Nathaniel Fox  
United States Magistrate Judge, SDNY  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: Mark Kapiti v. Raymond W. Kelly, et al., 07 Civ. 3782 (RMB) (KNF)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter on behalf of defendants City of New York, Police Commissioner Raymond W. Kelly, and the Property Clerk of the New York City Police Department ("City defendants"). In that regard, I write to respectfully request that Your Honor compel third-party defendant American Honda Finance Corporation ("American Honda") to produce a representative from American Honda for a deposition within the discovery deadlines set by the Court.<sup>1</sup> In the alternative, City defendants respectfully request (1) that American Honda be compelled to make a representative from American Honda available in the month of June; and (2) that the Court extend discovery for the sole purpose of taking that deposition.

As background, towards the end of last month, City defendants attempted to confer with counsel for American Honda about when they could produce a representative for a deposition. However, it was American Honda's position that they had not yet been joined in the lawsuit and were not required to engage in discovery until their motion to dismiss was decided. Thereafter, at a conference before the Honorable Richard M. Berman on May 1, 2008, the Court ordered American Honda, over its objection, to proceed with discovery, within the strict discovery deadlines set by the Court even though American Honda intended to move to dismiss.

<sup>1</sup> Discovery in this matter is presently scheduled to close on May 30, 2008.

Furthermore, Judge Berman instructed the parties to bring any additional disputes to Your Honor. Thereafter, City defendants served American Honda with a Notice of Deposition, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, dated May 20, 2008, commanding American Honda to designate and produce to testify a representative from American Honda with knowledge of the relevant facts on May 27, 2008.<sup>2</sup> By letter, dated May 21, 2008, annexed hereto as Exhibit B, counsel for American Honda stated that the "notice of seven (7) days" of defendants' Notice of Deposition "does not comport with the Federal Rules of Civil Procedure or the local rules of the Southern District." Moreover, counsel for American Honda incorrectly stated in the letter that the Honorable Richard M. Berman set no time constraints for discovery for American Honda. After City defendants received the letter, dated May 21, 2008 from American Honda, counsel for defendant City of New York called counsel for American Honda to attempt to schedule the deposition at a time and/or venue more convenient for American Honda. However, counsel for American Honda refused to discuss the matter and hung up the phone on counsel for City defendants.

Accordingly, given American Honda's unwillingness to produce a representative for a deposition, City defendants respectfully request that Your Honor compel third-party defendant American Honda to produce a representative from American Honda for a deposition pursuant to City defendants' notice of deposition, dated May 20, 2008. In the alternative, City defendants respectfully request that (1) American Honda be compelled to make a representative from American Honda available in the month of June; and (2) that the Court extend discovery for the sole purpose of taking that deposition.

5/27/08

On April 28, 2008, the assigned district judge fixed the date for the parties to complete their pretrial discovery activities and advised the parties that no additional extension for discovery would be made. May 30, 2008, is the date by which all discovery must be completed.

Therefore, on or before May 30, 2008, American Honda must produce a representative for a deposition, unless the assigned district judge alters his April 28, 2008 order respecting the date by which discovery must be completed.

SO ORDERED:

Kevin Nathaniel Fox

KEVIN NATHANIEL FOX, U.S.M.J.

<sup>2</sup> Annexed hereto as Exhibit A is City defendants' Notice of Deposition, dated May 20, 2008.

I thank the Court for its consideration herein of the issues presented herein.

Respectfully submitted,



Philip S. Frank (PF-3319)  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: **Via Hand Delivery**  
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